

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of THE COMMONWEALTH OF PUERTO RICO <u>et al.</u> , Debtors. ¹	PROMESA Title III Case No. 17 BK 3283-LTS (Jointly Administered)
In re: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of PUERTO RICO ELECTRIC POWER AUTHORITY, Debtor.	PROMESA Title III Case No. 17 BK 4780-LTS

AMENDED ORDER REGARDING PROCEDURES FOR HEARING
ON CONFIRMATION OF PREPA PLAN OF ADJUSTMENT

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

The Court will receive evidence and hear argument in connection with the request of the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”) for approval of the *Modified Second Amended Title III Plan of Adjustment of the Puerto Rico Electric Power Authority* (Docket No. 23663 in Case No. 17-3283 and Docket Entry No. 3296 in Case No. 17-4780, as may be supplemented or amended, the “Plan of Adjustment”) beginning on **July 17, 2023, at 9:30 a.m. (Atlantic Standard Time)** (the “Confirmation Hearing”). The Confirmation Hearing will continue as necessary at **9:30 a.m. (Atlantic Standard Time)** on July 18-21, 24, and 26-28, 2023. The Court will conduct the Confirmation Hearing in a courtroom to be designated in the United States District Court for the District of Puerto Rico, 150 Carlos Chardón Street, Federal Building, San Juan, Puerto Rico 00918-1767 (the “San Juan Courtroom”). The Confirmation Hearing shall be governed by the following procedures.

Registration for In-Person Attendance and Listen-In Facilities for Attorneys, Members of the Public and Press

1. **In-Person Participation.** The Court will conduct the Confirmation Hearing live from the San Juan Courtroom. Counsel who intend to present oral argument at the Confirmation Hearing may appear in person in the San Juan Courtroom or in Courtroom 17C of the United States District Court for the Southern District of New York, Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, New York 10007 (the “New York Courtroom”). Counsel who intend to examine witnesses will only be permitted to do so in-person in the San Juan Courtroom. Counsel who are not scheduled to present argument or examine witnesses have the following options to access the Confirmation Hearing: (i) observe in person in the San Juan Courtroom, or (ii) observe a video feed in person in the New York Courtroom. **Counsel who have entered their appearance in the Title III proceedings and intend to participate in the Hearing in person must file an informative motion**, as set forth in paragraph 9 below.

Witnesses providing testimony, counsel proffering them, and counsel intending to examine them are expected to appear in person in the San Juan Courtroom, as set forth in paragraph 10 below.

Informative motions are due **no later than July 5, 2023, at 5:00 p.m. (Atlantic Standard Time)**.

2. **Listen-Only Public Access to the Hearings.** Members of the public, press, and attorneys may **listen to but not view or participate in** the Hearings by dialing (888) 363-4749, and, when prompted, entering the access code (7214978) and security code (7533) for listen-only access. This telephonic access line for the press and the general public will be in listen-only mode at all times. Recording and retransmission of the proceedings by any means are prohibited.

3. **Press Room.** A live feed of the proceedings will be available for viewing in press rooms in the San Juan courthouse. Members of the press should contact presscredentials@prd.uscourts.gov (San Juan) regarding viewing facilities and space availability. Members of the press may also view the proceedings in the New York Courtroom or dial into the listen-only line.

Exhibit List Procedures

4. Counsel for any party-in-interest (each, a “Party”) and any individual Party not represented by counsel, that has timely filed an objection to the proposed plan of adjustment, must file exhibit lists by June 21, 2023. An exhibit list is a separate filing from the Exhibit Cover Sheet, which is attached to the Party’s pretrial informative motion. The exhibit list contains: a list of the exhibits, in sequential order, with party identifiers (ex. Party ABC Ex. 1, Party DEF Ex. 10), and a description of the exhibit. The individual exhibits **must be attached to the Exhibit List**. Each Party must follow the below instructions for filing the Exhibit List.

- i. Each Party is directed to file an Exhibit List using the CM/ECF event “Motion Submitting.”
- ii. Each Party must upload each exhibit as a separate attachment to the Exhibit List. Hyperlinks may not be used in lieu of uploading an exhibit.
- iii. The Exhibit List is intended to be a single filing (with multiple exhibits). If your Exhibit List and attachments exceed the upload capacity of CM/ECF,² a Party may divide its submission into multiple filings.
 - A. **Large Exhibits.** If a single exhibit is too large to file, Parties shall divide the exhibit into separate attachments. In this scenario, the Party assigns each part of the exhibit **the same exhibit letter or number**, and types in the text field “Part 1 of [Total Number].” Parties **must** select the same exhibit letter or number to indicate to the Court that an uploaded exhibit is continued in the next attachment. For example, if “Party ABC” needs to divide Exhibit C into 3 attachments due to its size, “Party ABC” will upload and designate the exhibit as follows: Exhibit C: “Part 1 of 3,” the next attachment as Exhibit C “Part 2 of 3,” and the final attachment as Exhibit C “Part 3 of 3.” The next attachment will then proceed to Exhibit D.
 - B. **Multiple Filings.** If a group of exhibits reaches the 20MB capacity for a single CM/ECF filing, parties must continue to file their exhibits by starting a new filing. Parties will again select the “Motion Submitting” CM/ECF Activity when filing the next set of exhibits. The main document for a continued filing should be titled “Continued Exhibits of [Party Name]” and may include a list of the exhibits attached to that single filing.
- iv. **Requests to Seal Certain Exhibits.** A Party who has included an exhibit on their Exhibit List that is subject to a sealing application **must file a placeholder for the exhibit, clearly marked as such.** The placeholder document can simply state “Exhibit Name, Exhibit Brief Description, Party [Name] will file a Motion to Seal regarding Exhibit [Letter].” The Party must still select the exhibit letter corresponding to the exhibit and type in the text field “SEALED Exhibit [Letter].”
 - A. When a Party files a motion to seal, the Party must select the CM/ECF designation “MOTION TO SEAL” or “URGENT MOTION TO SEAL.” This is the only CM/ECF Designation that allows the Clerk’s Office to unseal the document at a later date.

² The maximum capacity of the U.S. Bankruptcy Court for the District of Puerto Rico CM/ECF System is 20 MB for a single filing.

Failure to select the appropriate designation will result in a deficient filing notification and/or termination of the motion.

5. Counsel must file all exhibits a Party intends to use in connection with the Confirmation Hearing no later than June 21, 2023. **Late-filed exhibits will not be considered** in connection with the Confirmation Hearing absent good cause, consent of all parties, and further order of this Court granting an extension of time to file supplemental materials.

6. **Electronic and Physical Exhibit Binders.** Parties must meet and confer in advance of the Confirmation Hearing to use their best efforts to agree on the admissibility of the proposed exhibits into evidence. By no later than **July 10, 2023, at 3:00 p.m. (Atlantic Standard Time)**, the Parties shall, through the Oversight Board's counsel, provide to **each** of the courthouses³ (a) an index containing a list of agreed upon exhibits and whose admissibility into evidence is not agreed, (b) a binder containing exhibits whose admissibility into evidence for purposes of the Confirmation Hearing is agreed, (c) a binder containing exhibits whose admissibility into evidence is not agreed, and (d) a binder containing witness direct testimony declarations and supplemental declarations (as appropriate). The Oversight Board's counsel shall provide an electronic binder of the same by **July 10, 2023**.

7. **Display of Exhibits or Demonstratives in the Courtroom.** To the extent a Party intends to electronically display exhibits or a demonstrative at any point during the Confirmation Hearing, each Party shall contact chambers at SwainDPRCorresp@nysd.uscourts.gov by **3:00 p.m. (Atlantic Standard Time) on July 6,**

³ The binders shall be addressed to the following locations: (i) United States District Court for the District of Puerto Rico, 150 Carlos Chardón Street, Federal Building, San Juan, Puerto Rico 00918-1767, and (ii) the United States District Court for the Southern District of New York, Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, New York 10007.

2023, to receive instructions on technological arrangements. Counsel will be required to bring a personal computer with internet capability to the courtroom on the date of the hearing and the Party will be responsible for displaying documents. If a party intends to display something other than a filed exhibit, the party must file the document as a separate informative motion with the word “Demonstrative” in the title no later than **5:00 p.m. (Atlantic Standard Time) on July 16, 2023**. The reference material must be attached to the informative motion as a separate, text searchable document.

8. Counsel displaying exhibits or demonstratives must (i) identify which counsel will be responsible for displaying material, bring a personal computer with internet capability to the courtroom on the date of the hearing.

Party Informative Motion and Exhibit List Procedures

9. Each Party and any individual Party not represented by counsel, that has timely filed an objection to the proposed plan of adjustment, that wishes to participate in the Confirmation Hearing must complete the attached Party Appearance Sheet, Witness Cover Sheet, and Exhibit Cover Sheet, annexed hereto as Exhibit A, Exhibit B, and Exhibit C. Each sheet must be attached as an exhibit to a Party’s Pretrial Informative Motion. In accordance with paragraph 1, a Party must file an informative motion by **July 5, 2023, at 5:00 p.m. (Atlantic Standard Time)**, identifying (a) the Party for which they intend to appear, (b) the name(s), email address(es), and phone number(s) of the representatives of Each Party who will appear, and (c) if the Party wishes to cross-examine any declarant.

a. Party Appearance Cover Sheet (Exhibit A). The Party Appearance Cover Sheet shall list each Party who will participate in the Confirmation Hearing. Observers in the San Juan Courtroom are not required to complete a Party Appearance Sheet.

b. Exhibit Cover Sheet (Exhibit B). As set forth in paragraph 4 above, the Exhibit Cover Sheet is a separate filing from the Exhibit List. The purpose of the Exhibit Cover Sheet is to list **only those exhibits that Each Party seeks to have admitted into evidence at the Confirmation Hearing**. Exhibit Lists and the individual exhibits are due June 21, 2023. The Exhibit Cover Sheet is not an opportunity to submit new exhibits, but rather identify which exhibits will be used at the time of the Confirmation Hearing. The Exhibit Cover Sheet is divided into two sections (a) a list of exhibits whose admissibility into evidence for purposes of the Confirmation Hearing is agreed, and (b) a list of exhibits whose admissibility into evidence is not agreed. Thus, all parties must meet and confer prior to filing their Exhibit Cover Sheet.

c. Witness Cover Sheet (Exhibit C). If the Party wishes to cross-examine any declarant, the Party shall complete the Witness Cover Sheet indicating: (a) the witness(es) to be examined, (b) the factual issue(s) to which the proposed cross-examination or testimony relates, (c) the subject matter of the testimony and its relevance to the factual issue(s), and (d) the time requested for such examination or testimony.

d. Parties not represented by counsel. Any individual Party who has timely filed an objection to the proposed plan of adjustment and wishes to participate in the Confirmation Hearing must file a Pretrial Informative Motion with the Party Appearance Sheet, and Exhibit Cover Sheet, and Witness Cover Sheet as set forth in paragraph 9. An individual Party not represented by counsel who simply wishes to make a short statement to the Court in connection with the Confirmation Hearing may apply for an opportunity to do so in accordance with paragraph 13.

Witness Testimony

10. The court expects that all witnesses be available for in person cross-examination at the San Juan Courthouse during the Confirmation Hearing. Rule 43(a) of the

Federal Rules of Civil Procedure, made applicable by Rule 9017 of the Federal Rules of Bankruptcy Procedure, provides that for “good cause in compelling circumstances” a witness may be permitted to testify by contemporaneous transmission from a location other than the courtroom. Any motions to allow a witness to provide remote testimony shall be due no later than **July 5, 2023**.

a. The original proponent of a witness will be responsible for (a) arranging in-person participation at the Confirmation Hearing, (b) providing a certified interpreter if the witness requires the services of an interpreter,⁴ and (c) confirming witness attendance by emailing SwainDPRCorresp@nysd.uscourts.gov by **3:00 p.m. (Atlantic Standard Time)** the two days before the witness is scheduled to testify with the following information: the (1) name of the witness, and (2) the name of the interpreter, if any.

b. The Party intending to examine a witness must have identified the witness on the Party’s timely witness list and included the declarant’s name on the Witness Cover Sheet attached to the Party’s Pretrial Informative Motion. Direct testimony will be by declaration previously provided pursuant to the procedures prescribed for that purpose, and cross-examination and redirect examination, if any, shall be as set forth herein.

c. The Court will review all declarations that have been submitted in support of or opposition to confirmation of the Plan of Adjustment in advance of the Confirmation Hearing. The deadline for all Parties to file witness declarations to be used at the Confirmation Hearing is **June 26, 2023**. All such declarations are deemed submitted as direct testimony.

⁴ Information regarding interpreter services can be found on the website for the United States District Court for the District of Puerto Rico
<https://www.prd.uscourts.gov/interpreter-services>.

Notice of Confirmation Hearing Agenda

11. Parties intending to present argument and examine witnesses must meet and confer and jointly file a Notice of Confirmation Hearing Agenda no later than **July 3, 2023**, at **5:00 p.m. (Atlantic Standard Time)**. The Notice of Confirmation Hearing Agenda shall contain (a) the Parties (including any persons appearing pro se) who intend to appear and present opening and closing statements, (b) time allocations for each speaker providing an opening and closing statement, (c) the names and anticipated order of the witnesses that will be cross-examined, (d) the names and anticipated order of the Parties who will cross-examine the witnesses, and (e) the name of any Party who anticipates conducting redirect examination of a witness. The Court will allocate a total of **four** hours for opening arguments (split evenly between proponents and opponents of the Plan of Adjustment) beginning on July 17, 2023.

12. For each day of the Confirmation Hearing on which one or more witnesses will testify, the Oversight Board must submit, by **10:00 a.m. (Atlantic Standard Time) on the preceding day**, the names of any witness(es) that will be cross-examined, the names and anticipated order of the Parties who will cross-examine the witness(es), and the name(s) of any Party who anticipates conducting redirect examination of the witness(es).

13. **Public Testimony.** The Court expects that the entirety of **July 18, 2023**, will be devoted to hearing statements concerning the Plan of Adjustment by members of the public, to be selected by lottery, who will appear in person in the San Juan Courtroom at appointed times. Further information concerning procedures for members of the public to apply to address the Court on July 18, 2023, will be the subject of a future order.

14. **Courtroom Procedures.** All persons appearing in person or by telephonic means are reminded of the general prohibition against photographing, recording, and rebroadcasting of court proceedings. Violation of this prohibition may result in sanctions,

including removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the Court.

15. **Electronic Device Policy.** Counsel with Puerto Rico bar credentials are permitted to bring electronic devices into the San Juan courthouse. Counsel authorized to appear Pro Hac Vice in the Title III proceedings shall present (i) a paper or hard copy of the order granting Pro Hac Vice admission, and (ii) current government-issued photo identification.⁵ Devices may not be used for communications purposes in the courtroom and no photography, recording or transmission of the proceedings is permitted.

SO ORDERED.

Dated: June 15, 2023

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge

⁵ The electronic devices policy for the United States District Court for the District of Puerto Rico is available at <https://promesa.prd.uscourts.gov/electronic-devices-policies>.